DOCUMENT RESUME

ED 279 438 RC 015 801

TITLE	Migrant Farmworkers in Delaware.
INSTITUTION	Delaware Advisory Committee to the U.S. Commission on Civil Rights, Dover.
SPONS AGENCY	Commission on Civil Rights, Washington, D.C.
PUB DATE	Apr 84
NOTE	92p.
PUB TYPE	Information Analyses (070) -- Reports - General (140)
EDRS PRICE	MF01/PC04 Plus Postage.
DESCRIPTORS	*Civil Rights; Federal Regulation; Health Needs; Housing Needs; Living Standards; *Migrant Employment; *Migrant Health Services; *Migrant Housing; Migrant Problems; *Migrant Workers; Quality of Life; State Legislation; State Programs
IDENTIFIERS	*Delaware

ABSTRACT

The Delaware Advisory Committee to the United States Commission on Civil Rights examined housing, employment, and health among the state's more than 1,500 migrants. Committee findings indicated: (1) there is no accurate count of migrants in the state or migrants in need of housing on a seasonal basis; (2) Delaware has pursued an aggressive policy of upgrading and enforcing housing standards governing migrant labor camps; (3) 80% of all growers utilize the state clearance system to recruit migrant workers, thereby providing greater assurances of adequacy of available migrant housing; (4) an undetermined number of migrants are housed in unlicensed camps that do not provide decent, safe, and sanitary accommodations and are beyond the scope of state and local regulations; (5) during 1983, 11 farm labor contractors violated the Migrant and Seasonal Agricultural Workers Protection Act by failing to disclose conditions of employment, maintain required records, and/or provide wage statements to workers; (6) frequency and severity of migrant employment problems are decreasing; (7) alcoholism is considered the major Delaware migrant health problem and is directly related to the lack of recreational opportunities; and (8) Delaware offers a progressive system of health care services through public health clinics, rural ministries, private doctors, and private hospitals. (NEC)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED279438

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
☑ This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.
• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

MIGRANT FARMWORKERS IN DELAWARE

April 1984

A report of the Delaware Advisory Committee to the U.S. Commission on Civil Rights. The subject matter of this report is of public interest and, on that basis, the Commission has authorized its release. However the content of this State Advisory Committee report has not been approved by the U.S. Commission on Civil Rights; no finding of any violation of Federal civil rights laws has been made in this report; nor has the Commission endorsed any of the findings of fact or recommendations contained herein.

RC015801

BEST COPY AVAILABLE

THE STATE ADVISORY COMMITTEES

An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 as amended. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; initiate and forward advice and recommendations to the Commission upon matters in which the Commission shall request the assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference which the Commission may hold within the State.

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights, created by the Civil Rights Act of 1957, is an independent, bipartisan agency of the executive branch of the Federal Government. By the terms of the act, as amended, the Commission is charged with the following duties pertaining to discrimination or denials of the equal protection of the laws based on race, color, religion, sex, age, handicap or national origin, or in the administration of justice: investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to discrimination or denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to discrimination or denials of equal protection of the law; maintenance of a national clearinghouse for information respecting discrimination or denials of equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

TABLE OF CONTENTS

CHAPTER 1: INTRODUCTION.....PAGES 1 - 4

CHAPTER 2: HOUSING.....PAGES 2 - 22

CHAPTER 3: EMPLOYMENT.....PAGES 23 - 44

CHAPTER 4: HEALTH CARE.....PAGES 45 - 60

CHAPTER 5: FINDINGS AND RECOMMENDATIONS.....PAGES 61 - 66

APPENDIX A: AGENCY REVIEW REPLIES.....PAGES 67 - 83

APPENDIX B: MSPA VIOLATIONS.....PAGES 84 - 88

CHAPTER 1

INTRODUCTION

Delaware is one of three States comprising what is commonly referred to as the Delmarva Peninsula. Delaware, Maryland, and Virginia each claim portions of the peninsula, which is bordered on the east by the Delaware River and Atlantic Ocean, on the west by the Chesapeake Bay, and by the Atlantic Ocean on the south. The area is primarily rural and thinly populated. The boundaries of Delaware, Maryland, and Virginia are nearly indistinct except for changing road signs as the traveler passes from one jurisdiction to the next. In many respects the region is a single community.

To this fertile farm region come groups of agricultural workers from southern "home-base" States, most often Florida and Texas.[1] These workers are part of the eastern migrant stream which moves along the entire Atlantic coastal region from Florida to Maine. The migrant workers usually travel long distances in search of jobs. In order to minimize problems in finding work, many migrants allow themselves to be recruited and contracted for a series of jobs as part of a traveling work group or "crew."

During 1982, it is estimated that a peak population of approximately 1,500 migrants participated in the harvesting

---

[1]Al Glover, State farm project coordinator, interview in Dover, Del., July 20, 1983 (hereinafter cited as Glover July Interview).

of crops in Delaware.[2] These crops included asparagus, squash, cucumbers, potatoes, cabbage, peaches, cantaloupes, watermelons, apples, sweet corn, and nursery stock.[3]

The racial composition of migrant workers in Delaware typifies that of the eastern migrant stream[4] in that Delaware's migrants are primarily black, including a growing number of Haitians, with some Hispanics and relatively few whites.[5] Delaware's migrant workers generally range in age from 18 to 35 years.[6] The 1,500 migrants who labored to harvest Delaware's crops in 1982 are but a small fraction of the Nation's estimated 1.5 million migrants and seasonal farm laborers hired each year. However, in spite of their efforts, many people argue that migrants and the circumstances surrounding their labor are invisible to mainstream America. Susan Canning, executive director of Delmarva Rural Ministries, a migrant advocacy and service organization, explained:

> Nobody recognizes what migrants contribute to their State. Nobody recognizes them. Migrant workers are here making money, buying food, and contributing to the lifestyle of State

---

[2]Ibid.

[3]Ibid.

[4]Church Action for Safe and Just Communities, The Eastern Migrant Stream: CASJC Special Report, by Franklin D. Williams and Pamela Y. Williams (April 1982), p. 19.

[5]Glover Interview.

[6]Ibid.

residents. Yet nobody recognizes them.[7]

Nor does there appear to have been much change in the Nation's treatment of migrants since Edward R. Murrow's television documentary, "Harvest of Shame", aired more than 20 years ago.

Since then, several pieces of social legislation aimed at addressing the needs of migrant workers have been passed. This legislation includes the Comprehensive Employment and Training Act (CETA), which provided funds to farmworker organizations to assist migrants in several areas, including employment training and social services. CETA expired in September 1983 and was replaced by the Job Partnership Training Act[8] which provides employment and training programs for native Americans and migrant and seasonal farmworkers.[9]

In addition, social security benefits and unemployment compensation have been made available to migrant workers who qualify. Moreover, many migrants have availed themselves of legal services offered by various legal aid bureaus that are funded by Federal grants. However, in spite of the increased protection afforded by these legislative changes, the plight of most migrants remains relatively unchanged.

It is against this backdrop of stagnation and apathy that

---

[7]Susan Canning, executive director, Delmarva Rural Ministries, interview in Dover, Del., August 12, 1983 (hereinafter cited as Canning Interview).

[8]29 U.S.C.A. section 1501-1781 (1975 and 1983 Supplement).
[9]Ibid. at section 1672

the Delaware Advisory Committee, in conjunction with the Maryland and Virginia Advisory Committees, has undertaken this study of the living and working conditions of migrant workers on the Delmarva Peninsula. In this report, the Delaware Advisory Committee examines the areas of housing, employment, and health among Delaware's more than 1,500 migrants.

CHAPTER 2

HOUSING

Capacity of Migrant Housing

In 1983, a total of 26 licensed migratory labor camps operated in New Castle, Kent, and Sussex Counties in Delaware.[1] This tri-county area contains all of Delaware's migrant labor camps. The capacity of these 26 licensed camps is 888.[2] Over the past 18 years there has been a significant and continual decrease in both the number and capacity of migrant camps in Delaware. In 1965, the first year for which records were kept,[3] there were 101 migrant labor camps in Delaware with a total capacity of 6,217.[4] The reduction in the number and capacity of these camps has been attributed to the increased use of automation in the harvesting of crops and to an overall reduction in the number and size of farms within the State.[5]

---

[1]Charles A. Hatfield, Jr., program director, Office of Institutional and General Sanitation, interview in Dover, Del., August 12, 1983 (hereinafter cited as Hatfield Interview).

[2]Ibid.

[3]Statistical information submitted to the U.S. Commission on Civil Rights by Charles A. Hatfield, February 2, 1983 (hereinafter cited as Hatfield Submissions).

[4]Ibid.

[5]Glover Interview. Although the number of farms has decreased in Delaware since 1965, the average acreage per farm has increased from 163 in 1965 to 186 in 1981. (Marcie Bierlein,

The 1983 estimate for Delaware of approximately 1,500 represents only the peak migrant population.[6] It does not indicate the total number of migrants within the State during the 1983 harvest season. Nor does the estimate include those migrant workers who are not members of registered crews.[7]

There is no accurate count of the total number of migrants in the State. The estimate by the State Department of Labor of 1,500 migrants in 1982 was merely a projection based upon the peak season count of 1,024 registered migrant workers.[8] Nonworkers such as spouses or children are not included in this number.[9] Moreover, the 1,024 registered migrants include only those migrants who are members of a registered crew recruited through the Federal-State employment system.[10] Thus, when nonworkers, unregistered workers, and workers who have come and gone are included, the total number of migrants in the State of Delaware clearly exceeds the estimated 1,500 workers.

---

director, State Division of Employment Services, letter to Edward Rutledge, January 25, 1984; hereafter cited as Bierlein Response.)

[6]Ibid.

[7]Ibid.

[8]Ibid.

[9]Richard Shiels, monitor advocate, Delaware Department of Labor, interview in Dover, Del., August 8, 1983.

[10]Ibid.

Condition of Migrant Housing

In discussing the condition of housing units available to migrants, a distinction must be made between migrants who are members of registered crews and migrants who are not. Housing for migrants who belong to registered crews is subject to standards established by several Federal agencies (which shall be discussed later in this chapter), whereas housing for unregistered migrants or "freewheelers" is not.

One example of migrant housing available to members of registered crews is one camp in Kent County. The site is located in a rural area, off-road, and housed 48 migrants from July to October in 1982.[11] The camp consisted of four units constructed of cement block and woodframe.[12] Each unit has 2 rooms, 10 single beds, and covers an area of 312 square feet.[13] Facilities included four flush toilets, one urinal, four washbasins, and seven showerheads.[14] Also included were four cookstoves, three refrigerators, two washers, and two dryers which augmented six fixed laundry tubs. Water and electricity were installed, as was a heating system.[15] The camp also has a fire extinguisher,

---

[11]Statistical information submitted to the U.S. Commission on Civil Rights by Arthur S. Benson, director, Employment Services Division, Delaware Department of Labor, December 13, 1982 (hereinafter cited as Benson Submission).

[12]Ibid.

[13]Ibid.

[14]Ibid.

[15]Ibid.

first aid kit, and a dumpster which served as a garbage container. Insect screening was also in use.[16] Under terms of the interstate clearance order, this housing was provided without cost to the migrant worker.

The housing for migrant laborers who belong to registered crews as described above stands in sharp contrast to that available for freewheelers. Susan Canning of the Delmarva Rural Ministries described the living conditions of some unaffiliated migrant laborers this way:

> We saw many, many people last year, particularly those of the Haitian community, living in far below substandard housing . . . fifteen (15) people, adults, in one house with no plumbing, no running water . . . You shouldn't really even call them camps because they are not licensed camps. To allow some of these conditions to exist really defeats the purpose of the . . . [Migratory Camp Sanitation] . . . regulations.[17]

---

[16]Ibid.

[17]Susan Canning, executive director, Delmarva Rural Ministries, statement to the Delaware Advisory Committee, June 11, 1982.

The problem of poor housing for migrant laborers who belong to independent crews was echoed by Al Glover, Delaware State Farm Program Coordinator, who stated:

> There are some independent crews that come into Delaware and take jobs and housing whenever and wherever available . . . people [are] living in shacks with no running water . . . 27 or 28 people were living in two vans.[18]

Problems persist regarding housing provided both for registered crews and for independents. Some licensed camps have poor drainage, which causes flooding and the buildup of stagnant water.[19] This observation is supported by one State official who indicated that typical complaints about licensed labor camps might include "overflowing or improperly maintained garbage dumps and a lack of hot water for a couple of days."[20]

---

[18]Glover Interview. The Delaware Division of Employment Services reports that a lack of hot water or cold running water for short periods of one or two days has been reported, such conditions were corrected upon notification. The agency is unaware of licensed camps in operation without running or hot water for prolonged periods of time (Bierlein Reponse).

[19]Gina Miserendino, social services coordinator, Delmarva Rural Ministries, interview in Dover, Del., July 12, 1983.

[20]Glover Interview.

Greg Shell, managing attorney for the migrant worker unit with the Legal Aid Bureau in Salisbury, Maryland, that serves Delaware stated that he had observed a licensed camp in which serious overcrowding existed.[21] Twenty-six people were housed in a room intended for only fourteen people.[22] The room was said to have been so overcrowded that the beds were only about one foot apart.[23] Shell also stated that in other camps he had seen latrines that appeared not to have been emptied for years.[24] However, it is clear that the more serious problems with migrant housing exist in the unlicensed accommodations.

Governmental Regulation

Federal oversight responsibility for housing conditions at Delaware's migratory labor camps rests primarily with the U.S. Department of Labor (DOL). DOL administers the Migrant and

---

[21]Greg Shell, telephone interview, September 12, 1983 (hereinafter cited as Shell Interview).

[22]Ibid.

[23]Albert Lee, paralegal, Florida Rural Legal Services (temporarily detailed to Legal Aid Bureau, Inc., in Salisbury, Maryland), telephone interview, September 14, 1983 (hereinafter cited as Lee Interview). According to Charles A. Hatfield, "Each of the camps are measured, and the number of beds per room is established before the crew arrives at the camp....We honor the privacy of the migrant and do not [ordinarily] inspect each bedroom after it is occupied." (Susan H. Kirk-Ryan, letter to Edward Rutledge, Janaury 26, 1984. Hereafter cited as Kirk-Ryan Response.)

[24]Shell Interview.

Seasonal Agricultural Worker Protection Act[25] (MSPA), which replaced the Farm Labor Contractor Registration Act. DOL also administers the Wagner-Peyser National Employment System Act[26] and regulations issued under the Occupational Safety and Health Act (OSHA).[27] The Migrant and Seasonal Agricultural Worker Protection Act is enforced by the Wage and Hour Division of DOL's Employment Standards Administration (ESA), while the Wagner-Peyser Act, which created the U.S. Employment Service, is the responsibility of DOL's Employment Training Administration (ETA). The Wage and Hour Division is also responsible for enforcement of the Fair Labor Standards Act (FLSA).[28]

During 1983 the Wage and Hour Division conducted 16 investigations related to MSPA enforcement.[29] Six of these investigations disclosed health and safety violations with regard to housing. Some of the noted housing violations include:

1) Housing not structurally sound (one camp).

2) Toilets not constructed, located, or maintained in manner to prevent nuisance or public health hazard (one camp).

3) Privy structures and pits not fly-tight (one camp).

4) Failure to provide toilet tissue in common-use

---

[25]29 U.S.C.A. section 1801 (1975 and 1983 Supplement).

[26]29 U.S.C.A. section 49 (1973).

[27]29 C.F.R. section 1910.42 (1982).

[28]29 U.S.C.A. sections 201-219 (1978).

[29]Charles Angell, letter to Robert Owens, February 14, 1984 (hereafter cited as Angell February Response).

toilet facilities (one camp).

5) Inadequate space in sleeping area (three camps).[30]

It should be noted that a single camp, if poorly maintained, can be the basis for several violations. (For a complete listing of all housing violations found during DOL's investigation, see appendix B.)

In order to coordinate and strengthen its responsibilities in enforcing the protective statutes (FLSA, MSPA, and OSHA), DOL has established a National Farm Labor Coordinated Enforcement Committee under the direction of an Undersecretary of Labor.[31] Pursuant to OSHA regulations governing construction of temporary labor camps, all migrant housing must meet certain minimal standards. Among those standards are the following requirements:

1) All camps must be adequate in size to prevent overcrowding;[32]

2) All camps must be adequately drained;[33]

3) An adequate water supply for drinking, cooking, bathing, and laundry purposes must be provided;[34]

---

[30]Ibid.

[31]29 C.F.R. section 42.3 (1982).

[32]29 C.F.R. section 1910.142 (a)(2) (1982).

[33]Id. at (a)(1).

[34]Id. at (c)(1).

4) All camps must provide adequate toilet facilities for the capacity of the camp;[35] and

5) All exterior openings must be screened.[36]

Within the State of Delaware, regulations relating to migratory labor camps are administered by the State Board of Health[37] pursuant to the State Migratory Labor Camp Regulations.[38] These regulations generally parallel OSHA requirements in regulating site requirements,[39] shelter requirements,[40] cooking and eating facilities,[41] water supply,[42] toilet, laundry and bath facilities,[43] lighting,[44] and solid waste.[45] It should be noted, however, that within the State of Delaware, Federal OSHA regulations relating to migratory

---

[35]Id. at (d)(1).

[36]Id. at (b)(8).

[37]Susan Kirk-Ryan, deputy attorney general, Delaware Department of Justice, letter to Edward Darden, September 28, 1982.

[38]State Board of Health Migratory Labor Camp Regulations, sections 47.01--47.13.

[39]Id. at section 47.04.

[40]Id. at section 47.05.

[41]Id. at section 47.06.

[42]Id. at section 47.07.

[43]Id. at section 47.08.

[44]Id. at section 47.09.

[45]Id. at section 47.10.

labor are administered and enforced by OSHA within the U.S. Department of Labor.

In addition to OSHA and State Board of Health regulations, migrant housing is also governed by provisions of the Wagner-Peyser Act. The Division of Employment Services within Delaware's Department of Labor participates in processing interstate clearance orders under that act..[46] The interstate clearance order is a means of recruiting agricultural workers through the State employment office. The grower who wishes to recruit laborers submits the clearance order to the State employment office. The clearance order must indicate, among other things, the number of workers sought and the type and cost of available housing.[47] With respect to housing, the order must indicate room dimensions, number of beds, capacity, number of toilets and showers, and whether the housing is in compliance with State regulations governing water, electricity, and heating.[48] According to Al Glover, "80 percent of the growers in the State use the clearance system"[49] to recruit workers.

Pursuant to the Migrant and Seasonal Agricultural Worker Protection Act, neither the crewleader nor the grower is technically required to provide rent-free or public housing

---

[46]Benson Submission.

[47]Ibid.

[48]Ibid.

[49]Glover Interview.

for migrant workers.[50] However, MSPA does require the crewleader to identify the housing to be used by migrants and, further, requires that anyone who owns or controls the housing must comply with MSPA housing requirements.[51] These requirements refer to other Federal and State requirements. Migrant housing that was built or was under construction prior to April 3, 1980, must conform to standards set by either the Employment and Training Administration or by OSHA.[52] Migrant housing constructed after April 3, 1980, must conform to OSHA regulations.[53] In Delaware, all migrant housing provided by growers is also owned by the growers.[54] Thus, all migratory labor camps in Delaware are subject to MSPA regulations.

According to the Delaware Department of Health and Social Services, housing conditions for migrants have improved in registered camps and the public health staff watches these camps closely.[55] However, the department acknowledges that "conditions outside these camps can be

---

[50]However, if housing is provided to migrant workers, only the reasonable cost of furnishing such facility, excluding profit, is creditable as wages under the Fair Labor Standards Act. (Charles Angell, Region 3 Administrator, Employment Standards Administration, U.S. Department of Labor, letter to Edward Rutledge, January 19, 1984. Hereafter cited as Angell Response.)

[51]29 U.S.C.A. section 1823(a) (1975 and 1983 Supplement).

[52]29 C.F.R. section 500.132 (1983).

[53]Id.

[54]Glover Interview.

[55]Patricia C. Schramm, Secretary, Department of Health and Social Services, letter to Edward Rutledge, January 10, 1984.

deplorable."[56] The department cites several reasons for deplorable conditions in unregistered camps. A review of camp regulations by the State Division of Public Health, the State Agriculture Department, the State Labor Department, and the State Attorney General's office one year ago concluded that:

> any attempt to modify the existing regulations would be a problem in that it would make them intrusive into areas where no clearly defined authority was given.[57]

Thus, the ambiguity surrounding the jurisdictional roles of these State agencies hinders the State's efforts to ensure the quality of migrant housing.

The lack of Statewide or local housing codes in lower Delaware also hampers effective control of substandard dwellings.[58] The Division of Public Health has been urging county governments to adopt such local ordinances.[59] Even in camps not covered by State regulation, bad housing conditions can be corrected. One way of treating such problems is by enacting nuisance regulations. According to the Secretary of the Department of Health and Social Services:

> nuisance regulations can be invoked, but this requires the cooperation of the local law enforcement and judicial agencies, and often

---

[56]Ibid.
[57]Ibid.
[58]Ibid.
[59]Ibid.

> the inhabitants are gone before any effective action can be taken. The residents then are simply forced from one substandard dwelling to another one that may be even less desireable.[60]

Thus, the interdependence of various local agencies and the mobility of the migrant workforce also hampers the State's ability to control migrant housing.

Inspection of Migrant Camps

As discussed above, migrant housing is subject to inspection pursuant to regulations issued under OSHA, the Wagner-Peyser Act, FLSA, and MSPA. For the most part, monitoring and enforcement of these Federal regulations is delegated in Delaware to the State Department of Labor and to the State Department of Health and Social Services. Both the Division of Employment Services[61] and the Division of Public Health[62] conducts pre- and postoccupancy inspections of migrant labor camps. The Division of Employment Services must ascertain whether the housing provided by the farm owner meets Federal standards under MSPA and whether applicable provisions of the Wagner-Peyser Act are met in processing interstate clearance orders.[63] However, it is the Division

---

[60]Ibid.
[61]Ibid.
[62]Hatfield Interview.
[63]Glover Interview.

of Public Health that has sole authority to issue a license to operate a migrant labor camp in the State.[64]

Upon completion of an application by a grower or crewleader to operate a migrant labor camp, the health department schedules a preoccupancy inspection to determine if the camp meets State health requirements.[65] Inspections are done by employees of the State's Division of Public Health assigned to various counties within the State.[66] The inspection focuses upon areas previously described, including site, shelter, water, etc. The camp operator is given an inspection form on the day of inspection that indicates what, if any, violations were found and a time by which to effect repairs.[67]

After inspection, a camp can either be given a license, given a provisional license, or denied a license. According to Hatfield, "you should never give a permit with a lot of waivers attached."[68] Accordingly, the health department issues very few provisional permits. Of Delaware's 27 licensed camps operating in 1982, only 2 were issued provisional permits.[69] In 1983 only one provisional

---

[64]Hatfield Interview.

[65]Ibid.

[66]Kirk-Ryan Response.

[67]Ibid.

[68]Ibid.

[69]Ibid.

permit was issued among the State's 26 licensed camps.[70] Provisional permits are issued where the violations of State standards are minor. Subsequent to the preoccupancy inspection, the health department reinspects each camp once every month in unannounced visits.[71] According to Hatfield, the Division of Public Health does have adequate staff with which to conduct inspections.

Another benefit enjoyed by health inspectors is that of cooperation by farm owners and crewleaders.[72] However, cooperation was not always so readily given. In 1973 the Division of Public Health conducted a "baseline survey" of housing conditions in Delaware's migrant labor camps.[73] The survey revealed numerous violations of which the owners were apprised. The health department sent letters to the farmers requiring them to make repairs and informing them that their camps would not be relicensed unless repairs were made.[74] Most farmers made repairs, although some refused and operated unlicensed camps. The health department issued warrants for the arrest of two farmers who eventually paid fines and made repairs.[75]

---

[70]Ibid.

[71]Ibid.

[72]Ibid.

[73]Ibid.

[74]Ibid.

[75]Ibid.

In addition to the arrest of two farmers and the attendant publicity about poor camp conditions, another step was taken to upgrade Delaware's migrant housing stock. In 1973, the Division of Public Health along with its Health Advisory Council and the State Department of Labor, as well as representatives from the canning industry, migrants, and church workers met to review the results of the baseline survey. As the result of those meetings, regulations affecting migratory labor camps were revised using OSHA regulations as the guideline.[76] These actions, collectively, have contributed to what Susan Canning considers "adequate housing in licensed labor camps."[77]

Analysis

Migratory labor camps in Delaware are subject to the housing regulations of several Federal agencies. While this is true of licensed migrant camps in nearly every State, several factors operate in concert to fashion a favorable result in Delaware. First, it should be noted that Delaware, with upwards of 1,500 migrants, has far fewer migrants to deal with than does Maryland or Virginia. Secondly, all migratory labor camps in Delaware are owned by the farm

---

[76]Ibid.

[77]Canning Interview.

owner. Thus, the housing provisions[78] of MSPA apply. Thirdly, because 80 percent of all farmers in Delaware recruit migrant workers through the interstate clearance system, certification as to the safety and health of housing for migrants is also required.[79] In addition, OSHA regulations pertaining to construction of temporary labor camps[80] also apply to Delaware's migratory labor housing.

The single most significant factor in achieving the goal of these Federal regulations is enforcement. It is essential that State agencies to which monitoring and enforcement is delegated, such as the health department and the employment office, adopt a very serious attitude about implementing the regulations. It is clear that the department of health has done so in Delaware. The health department has revised its regulations affecting the quality of migrant housing and has demonstrated a willingness to do whatever might be necessary to enforce its regulations. Moreover, the agency has worked with the farm owner to help bring about the desired change. Greg Shell of the Legal Aid Bureau stated "to Delaware's credit, in housing they have done some good work."[81] As the result of efforts by the State's Department of Health and Social Services and the Department of Labor, licensed migrant housing in Delaware is, in the words of Susan

---

[78]29 U.S.C.A. section 1823 (1975 and 1983 Supplement).

[79]20 C.F.R. section 654.400 (b) (1983).

[80]29 C.F.R. section 1910.142 (1982).

[81]Shell Interview.

Canning, "adequate." This is in striking contrast to other licensed housing on the Delmarva Peninsula.

CHAPTER 3

EMPLOYMENT

In fiscal year 1982, approximately 1,042 migrants were employed as agricultural laborers in Delaware. This figure represents the best estimate of State officials[1] and should not be construed as the actual number of migrant workers in the state. In fact, the Delaware Department of Labor does not differentiate between the number of migrant workers and the number of seasonal agricultural workers,[2] although the total number for both groups was estimated to be 5,100 in fiscal year 1982.[3]

The majority of Delaware's migrant workers are recruited through use of the interstate clearance system. State officials indicated that "80 percent of the growers use the system."[4] In 1982, 696 workers were recruited through the clearance system.[5] The overwhelming majority, as many as 80 percent, of Delaware's migrant workforce are employed in the packaging of potatoes.[6]

---

[1]Glover Interview.

[2]Ibid.

[3]Dennis C. Carey, secretary, Delaware Department of Labor, letter to Edward Darden, August 3, 1982 (hereafter cited as Carey Submission).

[4]Richard Shiels, monitor advocate, Delaware Department of Labor, Division of Employment Services, interview in Dover, Del., July 20, 1983 (hereinafter cited as Shiels Interview).

[5]Glover Interview.

The typical migrant crew in Delaware recruited through the interstate clearance system originates in either Florida, Texas, or Puerto Rico.[7] In 1983 the State's Division of Employment Services processed 32 clearance orders in Delaware.[8] Of that number, 21 originated in Florida, 7 in Texas, and 4 in Puerto Rico.[9]

Delaware's migrant crews begin to arrive in mid-April and remain until the end of November.[10] During this time they engage in harvesting several different crops. For example, a migrant crew that arrives on April 15 might start off picking asparagus. Subsequently, the crew might pick squash, then cucumbers, then do potato grading, and finally finish by picking apples in November.

Migrants are compensated for their labor based on either a piece rate, wherein they are paid for the amount they pick (or pack), or on an hourly wage.[11] According to one State official, most migrants prefer piecework to an hourly wage because piecework provides better pay.[12] As an example, the State official explained that the hourly rate of pay is the Federal minimum wage of

---

[6]Shell Interview.

[7]Glover Interview.

[8]Ibid.

[9]Ibid.

[10]Ibid.

[11]Ibid.

[12]Al Glover, telephone interview, September 13, 1983.

$3.35 per hour. However, the piece rate will usually result in higher pay. Picking asparagus and cucumbers usually averages $6.00 or $7.00 per hour.[13]

The same State official described the rate of pay in the potato grading industry. He stated that the average work week was about 44 hours, compensated at the rate of $3.35 per hour which provided an average weekly salary of $147.00[14] Albert Lee, a paralegal, stated that he is aware of migrants having earned in excess of $200 per week grading potatoes.[15] The salary, said Lee, depends upon the number of hours worked per week and the contractor for whom one works.[16]

Employment Problems

Employment-related problems among Delaware migrants were said to be few.[17] During 1982, the State employment office conducted 13 unannounced field checks in addition to 23 preoccupancy inspections.[18] These field checks revealed no violation of Federal or State regulations affecting the employment of migrant farmworkers.[19] However, Al Glover of

---

[13]Ibid.

[14]Ibid.

[15]Lee Interview.

[16]Ibid.

[17]Shiels Interview.

[18]Glover September Interview.

[19]Ibid.

the State employment office was aware of a few allegations made in 1983 concerning alleged overcharging by crewleaders for food consumed by migrants and about insufficient wages paid to migrants.[20]

The image of a relatively problem-free working environment is not shared by everyone who regularly deals with migrants. Legal aid attorney Greg Shell had a different view. He believed that the biggest problem was with the potato industry. Shell asserted that many of Delaware's migrants are paid less than the minimum wage for their labor as potato graders.[21] Potato graders receive the potatoes, harvested by machine, as they are dumped from trailers onto conveyor belts. The graders then pick out the bad potatoes and rocks, size the potatoes and sew the bags, then finally load the bagged potatoes onto trailers.[22]

According to Shell, the average workday for migrants who grade potatoes begins about 7 or 8 a.m. and ends at about 9:30 p.m.[23] Thus, the average day consists of 12 working hours. However, migrant workers, according to Shell, are often credited with having worked only 6 or 7 hours during this time. The obvious result is that the

---

[20]Ibid.

[21]Shell Interview.

[22]Lee Interview.

[23]Shell Interview.

migrant worker will be paid the minimum wage of $3.35 per hour for only 6 hours. If such were the case, this would represent an obvious violation of the minimum wage law. Yet, even if true, the practice would not benefit the crewleader, as will be seen below.

The crewleader is paid a lump sum based upon the number of bags or pounds of potatoes that are bagged.[24] Thus, the crewleader is paid not based upon the number of hours that he or his crew have worked, but rather, upon the amount of work that he has produced. The average rate of pay for a contractor in potato grading might be 47 cents per 100 pounds of potatoes actually bagged.[25] Therefore, the crewleader, who pays the migrant worker from the amount that he receives,[26] is inclined to be more product-oriented than hour-oriented in determining the workers' compensation. This concept of piece rate pay for potato graders is, in the opinion of Shell, an industrywide practice.[27]

The biggest problem in compensating migrants for their work in potato grading has to do with what is commonly called "down" time.[28] Down time is the amount of time during which migrant workers are on the job waiting for work to be

---

[24]Ibid.

[25]Lee Interview.

[26]Ibid.; Shell Interview.

[27]Shell Interview.

[28]Ibid.

processed.[29] For example, if the conveyor belt breaks down, or if the potatoes become jammed or even if the workers are awaiting an order to be processed, this constitutes down time.[30] Migrants are not usually paid for down time.[31] Therefore, Shell contends, that while a worker might be on the job from 7 a.m. until 9 p.m., instead of being paid for 11 hours work, any down time will be deducted from the 11 hours.[32] It was Shell's contention that migrant workers are often paid only one half the total hours they have worked.[33]

Common sense would seem to indicate that no one would be willing to accept only one half the pay to which one is entitled. However, Shell explained that several factors lend themselves to a different conclusion. First, most migrants who do potato grading are specialists[34] who, prior to coming to Delaware, have done potato grading in Florida, North Carolina, Virginia, and Maryland.[35] As specialists, they have grown accustomed to not being paid for down time and do not perceive nonpayment as a problem.[36] Secondly,

---

[29]Ibid.

[30]Ibid.

[31]Ibid.

[32]Ibid.

[33]Ibid.

[34]Ibid.

[35]Ibid.

[36]Ibid.

many of the potato graders, up to one third or even one half, are heavy drinkers who have an alcoholic dependence on the crewleaders who often provides alcohol.[37] Therefore, this group won't complain. Finally, many of these migrants, because of their alcohol dependency would not be productive in other areas of migrant labor such as harvesting tomatoes or cucumbers, because they cannot pick very fast and are otherwise undependable.[38] Potato grading is their only real livelihood, and they are not willing to jeopardize it by making complaints of nonpayment.

These perceptions were given general support by another legal services worker, Albert Lee. He asserted that perhaps as many as 50 percent of Delaware's crewleaders and growers pay less than the minimum wage.[39] He stated that workers, on the average, work 12 hours per day, although this varies according to the contractor.[40] He felt that a migrant who works a 12-hour day would be paid for "maybe 6 hours." He too attributed the less than minimum wage payments to the fact that the crewleader is paid on a production basis and does not compensate workers for down time.

---

[37]Ibid.

[38]Ibid.

[39]Lee Interview.

[40]Ibid.

For example, a crew leader might earn 46 cents for every 100 lbs. of potatoes processed by his crew. An average trailer load of potatoes weighs 42,000 to 45,000 lbs.; labor requirements are usually for 18-25 workers[41] but may go as high as 30 workers.[42] Social security deductions are 6.7 percent of the workers' wages.[43] If a crewleader processes 42,000 lbs. of potatoes (840 50-lb. bags) at the rate of 46 cents per 100 lbs., he would earn $193.20. Wages for a crew of 30 workers at the rate of $3.35 per hour for 1.5 hours would be $150.75. Social security taxes would be $10.10, bringing the crewleader's cost per load to $160.85,for a net profit of $32.35. Thus, in the view of Albert Lee and Greg Shell, "the crewleaders don't get rich either."[44] A crewleader who paid the minimum wage for the full time required to load a trailer of potatoes, including down time, might actually lose money.

Shell also pointed out that the Department of Labor's Wage and Hour Division would probably not discover this kind of violation because this type of problem is not a priority item with the agency.[45] Moreover, it was his contention that wage and hour, in checking pay rates, relies heavily on the crewleader's record book which will only show the number of hours worked and the amount paid. Thus, if a migrant works 10 hours and is credited with only 7, the records will show 7 hours pay for 7 hours work and all will appear in order.

---

[41]Bierlein Response.
[42]Lee Interview.
[43]Bierlein Response.
[44]Shell and Lee Interviews.
[45]Shell Interview.

State and Federal officials, while conceding that such a problem was possible, felt it was most unlikely. Al Glover, of the State employment office, said that he was unaware of the existence of a problem with wage payments among graders.[46] Richard Kiggins, of the Wage and Hour Division (DOL), said that although such a problem was possible, it was not at all likely that the problem could exist without wage and hour being aware.[47] Kiggins stated that a normal wage and hour investigation entails an examination of payroll records as well as interviewing a representative number of employees.[48] According to Kiggins, workers would certainly be asked the time they began and ended the day's work.

With respect to nonpayment of migrants for down time, Kiggins stated if the time is short and the worker cannot leave the line then he must be paid. The same result would follow, said Kiggins, if the worker were relieved from the line but had no way to return to the camp or to the field.[49] However, if the worker is permitted to leave the line during down time and has a viable means of returning to camp, then he is not entitled to compensation for that time.[50]

---

[46]Al Glover, telephone interview.

[47]Richard Kiggins, Investigator, Wage and Hour Division, U.S. Department of Labor, Baltimore Area Office, telephone interview, September 13, 1983 (hereinafter cited as Kiggins Interview).

[48]Ibid.

[49]Ibid.

[50]Ibid.

Other work-related problems were said to include overcrowding in some camps,[51] overcharging by crewleaders for meals, wine, and cigarettes,[52] unsanitary latrines,[53] and failure by crewleaders to keep accurate records as required by law.[54] In some instances, crewleaders were said to be selling cigarettes to migrants for $2 per pack[55] and charging as much as $40--45 per week for food.[56]

Albert Lee also said that most migrants were afraid to complain to legal aid and to State and Federal officials for fear of reprisal by the crewleader.[57] It was felt that the migrant would be fired.[58] According to Lee:

> If you ask a migrant to talk to you about any problems or complaints he might have, he'll tell you 'we're okay, everything's fine.' The migrant knows that he can't afford to talk to

---

[51]Shell Interview; also see page 6.

[52]Ibid; Lee Interview.

[53]Shell Interview; also see page 6.

[54]Ibid; Lee Interview.

[55]Ibid.

[56]Ibid.

[57]Lee and Shell Interviews. The Delaware Division of Employment Services notes that while they have transferred workers from one crew to another, it was not done because of fear, nor has the agency ever been informed of any crewleader who mistreated or terminated his workers because they complained (Bierlein Response).

[58]Lee Interview.

> you. He's afraid he'll be fired, or labeled a troublemaker. He's afraid he'll do worse somewhere else. If he leaves town, someone else will eventually find him and they might beat them up.[59]

Lee also asserted that many crewleaders fail to keep records of when the migrant started and finished the day's work and of wage deductions.[60]

Another employment-related problem is the employment of freewheelers at less than the minimum wage. According to Sue Canning, freewheelers are sometimes hired by licensed crewleaders to augment their crew:

> The crewleader who hires them doesn't put them on his books and he often pays them less than minimum wage.[61]

In spite of these problems, many people believe that Delaware is improving the protections it affords to migrants. Albert Lee of the Legal Aid Bureau stated, "there is a cooperative spirit among growers to improve

---

[59]Ibid.

[60]Ibid.

[61]Canning Interview.

conditions."[62] Al Glover stated his belief that a great deal of the improvements is due to use of the interstate clearance order; "the clearance order is a necessary document if you want to maintain protection of migrants."[63] Asked why Delaware growers, unlike their Maryland and Virginia counterparts on the Delmarva Peninsula, use the clearance system so heavily, Glover replied:

> We keep them knowledgeable of the laws, we have good communication. Growers use the system in spite of its added expense, random field checks and increased regulation because growers think it's worth it.[64]

And finally, Kiggins of DOL's Wage and Hour Division said:

> As far as compliance with migrant laws and the Migrant and Seasonal Agricultural Worker Protection Act, I believe and I know [that] Delaware is in the forefront. The compliance history in Delaware over the years is exemplary.[65]

---

[62]Lee Interview.

[63]Glover Interview.

[64]Ibid.

[65]Kiggins Interview.

Governmental Regulation

The Federal government regulates migrant farmworker employment primarily through the Migrant and Seasonal Agricultural Worker Protection Act (MSPA)[66] and the Fair Labor Standards Act (FLSA).[67] The Wagner-Peyser Act[68] and the Employment and Training Administration (ETA) regulations issued pursuant to the act[69] also provide additional worker protections. Each of these laws and regulations promulgated thereunder is administered by the U.S. Department of Labor (DOL).

The Migrant and Seasonal Agricultural Worker Protection Act, effective in April 1983, replaced the Farm Labor Contractor Registration Act (FLCRA). MSPA provides that any person engaged in any farm labor contracting activity must be registered with the Secretary of Labor.[70] Any individual hired by the farm labor contractor (crewleader) who engages in farm contracting workmust also be registered.[71]

---

[66]29 U.S.C.A. sections 1801--1872 (1975 and 1983 Supplement).

[67]Id. at sections 201--219 (1978).

[68]Id. at section 49 (1973).

[69]20 C.F.R. sections 653.100--653.113 (1983).

[70]29 U.S.C.A. section 1811(a) (1975 and 1983 Supplement).

[71]Id at section 1811(b).

Registration can be denied to any farm labor contractor applicant who has knowingly made any misrepresentation in the application for a certificate[72] or who has been convicted within the preceding 5 years of any crime under State or Federal law relating to gambling, or to the sale, distribution or possession of alcoholic beverages in connection with any farm labor contracting activities.[73] Conviction within the preceding 5 years of any major felony is also grounds for denial.[74]

During 1983, one investigation by the Fair Labor Standards Administration disclosed minimum wage underpayments to nine employees amounting to $1,600.[75] This amount was recovered for the workers. All other FLSA investigations found compliance.[76]

One of the major advantages provided migrant workers by MSPA relates to the disclosures required to be made at the time of recruitment. MSPA provides in part that:

> Each farm labor contractor . . . which recruits any migrant agricultural worker shall . . . disclose in writing to each such worker . . .

---

[72]Id. at section 1813(a)(1).

[73]Id. at section 1813(a)(5)(A).

[74]Id. at section 1813(a)(5)(B).

[75]Angell Response.

[76]Ibid.

the following information at the time of the worker's recruitment:

1) the place of employment;

2) the wage rates to be paid;

3) the crops and kinds of activities on which the worker may be employed;

4) the period of employment;

5) the transportation, housing, and any other employee benefit to be provided, if any, and any costs to be charged for each of them 77

Disclosure of this information provides a basis upon which the migrant worker can make a knowing and informed decision about whether to accept employment.

Another very important provision of MSPA deals with the type of recordkeeping and information requirements imposed upon employers. In this regard MSPA provides:

Each farm labor contractor . . . which employs any migrant agricultural worker shall

1) with respect to each such worker, make, keep, and preserve records for three years of the following information:

a) the basis on which wages are paid;

b) the number of piecework units earned, if paid on a piecework basis;

77Id. at section 1821(a).

c) the number of hours worked;

d) the total pay period earnings;

e) the specific sums withheld and the purpose of each sum withheld; and

f) the net pay; and

2) provide to each such worker for each pay period, an itemized written statement of the information required by paragraph (1) . . . .[78]

Information of this nature is often the focal point of compliance investigations by the Employment Standards Administration's Wage and Hour Division. Violations of MSPA are punishable by fines of up to $1,000 or up to one year in prison or both.[79] In addition, the act provides that crewleaders may not ". . . intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any migrant . . . because such worker has . . . filed any complaint . . . ."[80]

The Fair Labor Standards Act regulates wages,[81] maximum

---

[78]Id. at section 1821(d).

[79]Id. at section 1851(a).

[80]Id. at section 1855(a).

[81]29 U.S.C.A. section 206(a)(1) (1978).

hours,[82] and child labor.[83] The act provides that:

> Every employer shall pay to each of his employees who in any workweek is engaged in . . . the production of goods for commerce . . . not less than $3.35 an hour . . . .[84]

Thus, if a migrant worker earns less than the equivalent of $3.35 per hour while being paid on a piecework basis, the employer must pay the worker the difference between the amount earned and the minimum wage. In practice, migrant workers receive no compensation for time spent traveling to and from the fields, for bad weather days, or for time during which processing or other equipment is inoperable.[85] The Fair Labor Standards Act is enforced by DOL's Wage and Hour Division.

During 1983, DOL's Wage and Hour Division conducted 16 MSPA enforcement investigations. Of these, 11 revealed

---

[82]Id. at section 207(a)(1).

[83]Id. at section 212.

[84]Id. at section 206(a)(1).

[85]Monica Heppel, sociologist and former migrant worker, interview in Accomac, Virginia, August 2, 1982.

violations.[86] Among them were the following:

1) Failure to disclose conditions of employment to workers (5 camps).

2) Failure to maintain records provided by the farm labor contractor (4 camps).

3) Failure to provide wage statements to workers (3 camps).

4) Failure to register employee (2 camps).

5) Utilizing the services of an unregistered farm labor contractor (one camp).

Again, it should be noted that a single camp, if poorly managed, can be the basis for several violations. (For a complete listing of MSPA violations found during DOL's investigations, see appendix B.)

The Wagner-Peyser Act established a national system of Federal/State employment offices that are operated by the States using Federal money.[87] One of the most important services provided to migrants and contractors by the State employment office is that of processing interstate clearance orders and making job referrals. These two functions are governed by regulations of DOL's Employment and Training

---

[86]Angell February Response.
[87]29 U.S.C.A. sections 49--49L--1 (1973 and 1983 Supplement).

Administration.[88] These regulations provide:

> Before a local office may refer workers to a farm labor contractor . . . one of two requirements must be met: Either a valid interstate clearance order from another state agency is on file in the office, or an intrastate order has been received . . . .[89]

In addition to processing clearance orders and making referrals, the State employment offices perform numerous other services for migrant and seasonal farmworkers, all of which are governed by ETA regulations. Among these services is the requirement that job order information be conspicuously posted in each State agency and that, where necessary, this information be provided in Spanish.[90] The migrant must also be provided a list of services available at the local office.[91] ETA regulations require each State office to operate an outreach program in order to locate and contact those migrants who are not reached by normal intake activities.[92]

---

[88] 20 C.F.R. section 653.104 (1983).

[89] Id. at section 653.104(c).

[90] Id. at section 653.102.

[91] Id. at section 653.103(c).

[92] Id. at section 653.007(a).

Finally, the regulations provide for State agency self-monitoring to assure that State agencies are in compliance with job service regulations in serving migrant and seasonal farmworkers.[93] The State administrator is required to appoint a State MSFW monitor advocate[94] who has responsibility for conducting an ongoing review of services and protections afforded MSFWs,[95] conducting an indepth analysis of the review data,[96] and proposing a written corrective action plan[97] as needed.

(Federal regulations at 20 C.F.R. parts 651, 653, and 658 (1983) were specifically issued by the Employment and Training Administration (ETA) to improve services and working conditions for migrant and seasonal farmworkers (MSFWs). Through these regulations, ETA has sought to insure that all State employment offices would provide services for MSFWs on a basis that is quanititatively proportionate to services provided to nonmigrants. To assure that these regulations are enforced, a review of State employment offices is conducted by Federal staff (regional and Federal representatives) on a periodic basis.)[98]

---

[93]Id. at section 653.108.

[94]Id. at section 653.108(b).

[95]Id. at section 653.108(g)(1).

[96]Id. at section 653.108(h)(3).

[97]Id. at section 653.108(h)(5).

[98]William J. Haltigan, Region 3 Administrator, Employment and Training Administration, U.S. Department of Labor, letter to Edward Rutledge, January 25, 1984.

Analysis

Employment conditions among migrant workers in Delaware appear to be improving from year to year. Delaware farmers make good use of the interstate clearance order system for recruiting migrants. In most instances, many of the same crewleaders bring in crews year after year and know what practices will and will not be tolerated by growers, migrants, and State and Federal officials. State and Federal officials come to know the practices of various crewleaders. They have a better sense of which crewleaders to watch and for what purposes. This is a tangible benefit that results from familiarity. The State also enjoys the benefit of having a knowledgeable farm community, a farm community that is kept abreast of current laws and that usually offers cooperation with State and Federal officials in complying with the law. Moreover, the State farm program coordinator appears to be a competent and well-intentioned professional who has earned the respect of farmers and other State officials.

However, there are some deficiencies as well. Some crewleaders continue to hire unregistered workers who are paid less than the minimum wage and who are compelled to live in poor housing. The State employment office in Dover does not have adequate staff to discharge effectively all of the duties which that office is to provide. For example, Al Glover

indicated that because of staff shortages in processing paperwork, his office did not use ETA form 785, Migrant Worker Itinerary, during 1982.[99] This form would have assisted in providing a more accurate count of nonworkers among migrants. Allegations are made that some crewleaders overcharge migrants for meals and cigarettes. In addition questions have been raised about the efficacy of wage and hour investigations in the potato grading industry.

Although Delaware continues to experience the breadth of problems common to migrant employment, the gravity and occurrence of those problems appear to be far less in Delaware than in its neighboring jurisdictions on the Delmarva Peninsula.

---

[99]Glover Interview.

CHAPTER 4

HEALTH CARE

Overview

According to statistics prepared by the Migrant Legal Action Program, the national life expectancy among migrant workers is 49 years, compared to a national life expectancy among the general population of 73 years.[1] The rate of infant mortality is two to three times the national average.[2] Four factors contribute to the reduced life expectancy and the high rate of infant mortality. These factors include poor sanitation, poor nutrition, alcoholism and drug abuse, and exposure to pesticides and herbicides.[3]

Diseases among East Coast migrants in the United States may be grouped in four major categories:

1) nutritional diseases such as anemias, eye and skin diseases, dental caries and bone malfunctions, high blood pressure and cardiac complications, vessel abnormalities, and diabetes;

2) sanitary diseases, such as hepatitis, diarrhea, food poisoning, worm infestation, and rodent and insect bites and contamination;

---

[1]Steven Nagler, executive director, Migrant Legal Action Program, briefing for staff of the Mid-Atlantic Regional Office, U.S. Commission on Civil Rights, Washington, D.C., June 3, 1982.
[2]Ibid.
[3]Ibid.

3) occupational diseases, such as fractures, loss of limbs and nails, muscle damage from stoop labor, skin and lung damage from pesticides and weather exposure; and,

4) social and communicable diseases, such as tuberculosis, venereal disease, childhood diseases incurred because of a lack of immunization, viral complications from colds and influenza, sickle cell anemia, and mental health problems, such as child and spouse abuse and other psychological disorders resulting from continual oppression and deprivation.[4]

Delaware Migrants

According to Gail Stevens, a health specialist with Delmarva Rural Ministries, Delaware's migrant population is "at risk" as far as health is concerned.[5] Stevens stated that health risks for migrants are exacerbated by long working hours, inadequate transportation to and from health care facilities, and language barriers between migrant workers and health care providers.[6] Stevens also stated that migrants also suffer from stress factors which produce "a lot of acute illnesses such as upper respiratory problems."[7]

---

[4]CASCJ Report, p. 9.
[5]Gail Stevens, R.N., health specialist, Delmarva Rural Ministries, interview in Dover, Delaware, August 12, 1983 (hereafter Stevens interview).
[6]Ibid.
[7]Ibid.

The most frequently cited health problems among Delaware migrants include alcoholism and high blood pressure. Sister Jacqueline Bricketto, director of La Casa San Francisco,[8] indicated that nearly 90 percent of the migrants for whom she has provided services have some problem with alcohol abuse.[9] According to Stevens, alcohol abuse is highest among black migrants, although the problem has been increasing among the Mexican American population.[10]

Alcohol abuse among Delaware migrants is thought to be greatly influenced by the lack of recreational opportunities available to them.[11] This view was shared by Stevens who said: "For many migrants, the only recreation in the non-working hours is alcoholic consumption."[12] Sister Bricketto asserted that because of the difficulty and the monotony of migrant labor, "You can't work if you're not drunk."[13]

The problem of high blood pressure is also frequent among Delaware migrants. Acording to Sister Bricketto, "Nearly every migrant has high blood pressure. It's

---

[8]Casa San Francisco is a nonprofit crisis center for agricultural workers. The center is located in Milton and provides several services to migrant and seasonal farmworkers, including shelter, food, clothing, blood screening, and instruction in English as a second language.

[9]Jacqueline Bricketto, director, Casa San Francisco, telephone interview, September 28, 1983 (hereafter cited as Bricketto Interview).

[10]Stevens Interview.

[11]Bricketto Interview.

[12]Stevens Interview.

[13]Bricketto Interview.

rare that you come across a migrant without high blood pressure."[14]

Stevens too noted a high incidence of high blood pressure among migrants, although in her view, the incidence of high blood pressure was most common among Southern blacks. Fewer cases are reported among Haitians.[15] Stevens stated that the incidence of high blood pressure among migrant laborers is directly related to their diet, stress, and the highly mobile nature of their work. She pointed out that migrants "are not responsible for the food they eat."[16] They often eat food that has been purchased by the crew leader and prepared at the labor camp. In this respect, Stevens said, "There are a number of nutrition problems among the Haitian workers."[17]

Upper respiratory problems such as asthma, bronchitis, and pneumonia were cited by Stevens as examples of acute illnesses among Delaware migrants.[18] These conditions were said to be affected by changes in weather[19] to which migrant workers are constantly exposed. According to Stevens, rashes and ear infections also have been reported in connection with upper respiratory problems.

The stress factors under which migrants work also affect their health. Hypertension is seen as a chronic problem among Delaware's

---

[14]Ibid.
[15]Stevens Interview.
[16]Ibid.
[17]Ibid.
[18]Ibid.
[19]Ibid.

migrant population.[20] Sister Bricketto stated that many migrants suffer from back problems.[21] Stevens too indicated that some migrants suffer from back pain and that such pain is often caused by improper body mechanics such as stooping and stretching over a prolonged period of time.[22] Poor vision was also seen as a problem among the migrant population of Delaware.[23]

Health Care Services

Health care services for migrant laborers in Delaware are, for the most part, provided by volunteer, nonprofit organizations, such as Delmarva Rural Ministries (DRM) or Casa San Francisco. Several such programs provide a variety of services including food, shelter, clothing, blood screening, English as a second language, etc. The most widely known of these organizations is DRM. DRM operates offcamp clinics within State service centers as well as oncamp in the outreach program. Migrant clinics are housed in two of the four State multiservice centers. The service centers in Wilmington and in Newark see few

---

[20]Ibid.
[21]Bricketto Interview.
[22]Stevens Interview.
[23]Ibid.; Bricketto Interview.

migrants.[24] However, the service centers that are downstate make special provisions for migrants. The Williams Service Center in Dover houses a migrant clinic and coordinates similar services at a satellite location in Milford. The Georgetown Service Center has satellites in Laurel, Bridgeville, and Roxanna, all available to migrant workers.[25] At the Georgetown location, migrants who use health services also have access to the several other agencies and nonprofit organizations that maintain offices there. DRM uses its good relationships with migrants and crew leaders, in addition to official sources, to identify migrants camps and thereby anticipate the location of migrants in the State. DRM then schedules clinics and screening near active camps. The clinics open usually once a week in each location for the first several weeks. The schedule decreases as the examinations and referrals are completed and the numbers of encounters drop.

The hours of operation are within usual business hours at the service centers and satellites; except, that the Georgetown Center and Milford satellite are open for extended operation from 7 p.m. to midnight as needed to allow DRM clinics, according to State officials.[26] The main service centers

---

[24]Mark Delmerico, chief, Division of State Service Centers, interview in Dover, Del., September 28, 1982 (hereafter cited as Delmerico Interview).
[25]Ibid.
[26]Ibid.

are equipped for comprehensive medical services, which include some surgical procedures.[27]

State officials described the following screening programs available to migrants:

1) The Rural Hypertension Control Program provides screening, diagnostic, and prescriptive treatment.

2) The Early Periodic Screening, Diagnostic, and Treatment Program provides medical screening, diagnosis, and treatment for families with eligibility under aid to families with dependent children (AFDC) and medicare.

3) The Volunteer Services and Adult Crisis Intervention Programs provides counseling and emergency shelter for victims of domestic violence, destitution, or sudden catastrophe.

4) The Pharmaceuticals Assistance Program funded by the DeNemours Foundation (Delaware) assists needy patients with funds for prescription drugs.[28]

5) In addition to these screening programs, migrants are eligible for any of the public health clinics, such as tuberculosis, venereal disease, child health, immunization, family planning, elderly screening and crippled children's services.[29]

The extent to which migrants avail themselves of existing medical services and screening may depend on several factors.

---

[27]Ibid.
[28]Ibid.
[29]Schram Response.

Transportation is one factor, although it usually does not constitute a major barrier. According to DRM and State officials, migrant workers are bused from licensed camps to evening clinics for initial medical screening and diagnosis. In addition, DRM transports workers in DRM vehicles when necessary and some migrants have access to private vehicles.

At least two factors do pose barriers to migrants in need of health services. First, it is difficult to locate unlicensed migrant housing in parts of the State. The Farmworker Service Coordinating Committee, a voluntary association of government and private organizations, noted in a letter to the Delaware Division of Health:

> Under present ...[Migratory Camp Sanitation]...regulations, if an agricultural employer rents and houses five or more workers in a facility, it would be identified as a migratory labor camp. If migratory workers, regardless of the number, rent the same facility themselves, the facility would be exempt from the migratory labor camp definitions and regulatory requirements.30

DRM recognizes that the State's list of migratory camps is blind to certain locations which serve as migrant camps but are not licensed as such. Nonetheless, DRM does

---

30A. O. Glover, chairperson, Migrant and Seasonal Farmworker Service Coordinating Committee, letter to Dr. George Bender, M.D., Delaware Division of Public Health, September 21, 1981.

administer health services to migrant workers in these locations. Last year there were at least 12 such locations in Delaware which DRM identified.[31]

The second problem, according to DRM, is the decreasing availability of physicians in rural communities. In Delaware, DRM utilizes provisions of the Emergency Health Personnel Act of 1970[32] to help with the shortage of health personnel, especially physicians. The act created the National Health Service Corps (NHSC), which places health personnel in areas where shortages of nurses and physicians exist. However, fewer physicians were available under the program in the past 2 years. According to DRM's executive director, more physicians are opting to practice in urban medical facilities,[33] a choice allowed by recent changes in the NHSC program. According to Susan Canning:

> I used to have approximately seven physicians available to me on the Delmarva...for my evening clinic. I now have one physician [through the NHSC]...and had to hire [other]...physicians for the [migrant]...community, and take money...to pay the physicians...out of my limited budget.[34]

---

[31]Canning Statement.
[32]42 U.S.C.A., section 254b (1974).
[33]Canning Statement.
[34]Ibid.

Commenting on the the importance of the NHSC in rural areas, Mario Manecci, Deputy Director, Migrant Health Programs, U.S. Department of Health and Human Services, said there would be "an adverse affect on rural health care if NHSC were stopped."[35]

Hospitalization

Emergency hospitalization is often arranged through referral by DRM. Under this system, a registered migrant worker or a responsible person contacts the DRM to assist with hospital admissions. Arrangements are made by DRM for the migrant to be accepted by a physician who authorizes hospital admission[36]. DRM says that registered migrants are required to use the referral system for most hospital emergency room admissions because:

(1) having no community-based physician, some migrants may use emergency room facilities for primary care or nonemergency ailments. DRM referral helps to eliminate abuse of emergency room care; and,

(2) several potential barriers exist for migrants at local hospitals that DRM helps to overcome.

DRM has identified four problem areas regarding migrant use of hospital emergency room facilities in Delaware. First is the pattern of insensitivity among emergency room admitting personnel

---

[35]Telephone interview, March 4, 1983.
[36]Gail Stevens, Delmarva Rural Ministries, telephone interview Feburary 25, 1983 (hereinafter Stevens February Interview).

According to DRM, many hospital admitting clerks talk only to the representative: "...they'll says things like 'What's his name?' or his age, when the person is sitting right there...it's all very dehumanizing for the migrant."[37]

Second, admitting personnel often fail to inform needy patients that the facility was constructed using Federal funds under the Hill-Burton Act[38], according to DRM. Hill-Burton hospitals must, by law, provide aid to needy patients. State officials indicate that Hill-Burton funds are distributed by county and that counties do not wish to exhaust Hill-Burton funds for noncounty residents.[39] Therefore, the county hospitals are likely to avoid notifying noncounty residents of Hill-Burton as a way of protecting county residents and assuring that other counties assume responsibility for their own needy.

Third is a pejorative attitude toward Haitian nationals. The typical Haitian migrant speaks creole. In an example of the difficulty the language barrier brings for Haitians, a DRM nurse recalled a Delaware physician who called DRM to translate for a Haitian worker he was treating. The physician had commented that treating the Haitian worker was "...like practicing veterinary medicine."[40]

---

[37]Ibid.
[38]42 USCA section 291.
[39]Amos Burke, director, Bureau of Health Planning, Division of Public Health, State Department of Health and Social Services, telephone interview, March 7, 1983.
[40]Stevens February Interview.

Fourth, some physicians do not accept migrant patients generally because they are doubtful that the fee will be paid. According to DRM, access to many downstate hospitals depends upon the cooperation of a local physician who has privileges at the facility. Since emergency room operations are handled "...like independent enterprises,"[41] some emergency rooms will not take hospitalize patients unless so ordered by a participating physician. According to DRM, on two occasions in 1982, migrants were turned away from a community hospital when no participating physicians would accept their cases.[42] The migrants were later admitted to hospital by physicians of another emergency room facility, 20 miles away.

Hospitalization in rural Delaware is handled by four facilities, usually Kent General Hospital, in Dover; Milford Memorial Hospital, in Milford; Beebe Hospital, in Lewes; and Nanticoke Memorial Hospital, in Seaford. Each is required to provide certain amounts of aid for needy persons under the Hill-Burton Act.

---

[41] Ibid.
[42] Ibid.

The cost of hospitalization for any duration is very difficult for DRM to subsidize. In fact, DRM policy is not to pay for hospitalization. Also, DRM reports that migrants find it "very difficult to get medicaid...[in Delaware]...because they have no tenure in the State."[43]

In 1982, about 30 migrants were referred by DRM for hospitalization for periods of 2-3 weeks or more. A variety of options were used to pay for the hospitalization. The Federal Public Health Hospital in Baltimore was utilized.

Also, the State's Indigent Migrant Program provides a certain amount of funds ($25,000 in 1982) to pay for hospitalization of migrant workers. Recipients of the funds must be migrant workers in Delaware, indigent, and have exhausted other funds or benefits for which they qualify. Funds are granted on a first-come, first-served basis, and there is no limit on the amount of each grant up to the limit of the fund.[44] The program is administered by the Delaware Department of Health and Social Services. A migrant may use any proof of address or employment to establish status as a migrant or a crewleader may identify the individual.[45]

---

[43]Ibid. The secretary of the State Department of Health and Social Services took exception to this statement, asserting, "We are aware of no rules regarding tenure in the Delaware medicaid program....Thus, the statement would appear to be inaccurate" (Schram Response).

[44]Sandra Land, director, Office of Maternal and Child Health and Crippled Children Services, Delaware Division of Public Health, telephone interview March 7, 1983.

[45]Ibid.

By late February 1983, the Indigent Migrant Program had used all funds available for FY 1983. The status of the fund in FY 1983 is very different than in prior years. In FY 1982, FY 1981, and FY 1980 the fund accounts were maintained through the migrant season. The last accounting of the fund available from the State shows that at the end of FY 1981, $6,346 remained of $25,000 available. DRM reports that in 1982 the Indigent Migrant Program fund was probably exhausted quickly by two serious cases.[46] According to Land, funds for the indigent migrant program are available by fiscal year (July 1 to June 30). However, the fiscal 1983 funds were exhausted by February 1983, an unusually early date, because of two persons with extended hospital stays and a larger than usual number of total individuals.[47] As of mid-January 1984, only about one-half of the available funding for fiscal 1984 has been used.[48]

Migrants who neither qualify for assistance to indigents, nor participate in the DRM project are personally responsible for the cost of their hospitalization. For this reason, some migrants carry commercial insurance, often obtained in the home base State.[49]

---

[46]Stephens February Interview.
[47]Kirk-Ryan response.
[48]Ibid.
[49]Charles Hatfield, Jr., program director, Office of Institutional and General Sanitation, telephone interview, February 23, 1983.

Cost of Medical Services

Generally rural Delaware is low-income and somewhat typical of the areas which have difficulty attracting physicians. A needs assessment study of Kent County maintains, "Statistical research reveals that poverty is still a pernicious force in Kent County which shapes the lives of 11.5 percent or more of its residents."[50] Migrant workers in Delaware generally earn little more than a few cents above the hourly minimum wage of $3.35 On such limited funds, the cost of medical services can become a serious problem for migrant workers.

The DRM health project makes a special effort to help migrant workers avoid financial burdens associated with medical services. According to DRM, the Delaware project has "an [outreach]... component not found in Southern projects."[51] Because the State is small and the migrant camp patterns are predictable, DRM can encounter the workers as they enter the Delaware service area.

---

[50]Ruth M. Laws and Cherritta L. Matthews, A Needs Assessment and County-Wide Plan, (Dover, Del.:L&M Educational Resources, Ltd., 1981.) pp. 49--59.
[51]Stevens February Interview.

During the initial registration and screening, DRM personnel are able to take financial information along with the worker's medical history. The financial data permits the DRM nurses to make decisions on appropriate referrals and benefit programs. Once the worker is registered in the migrant health project DRM assumes responsibility for the worker's medical bills.[52] DRM accepts direct billing from health professionals, facilities, and pharmacies for registered migrants.[53] In turn, DRM bills the worker according to a payment schedule; for example, DRM will pay a doctor $25 for an office visit and the migrant will pay DRM $8.

DRM gives the migrant an opportunity to pay all or part of their portion of medical bills. However, the bills are due while the migrant is in Delaware. Unpaid bills are seldom forwarded to the migrants home base for collection. According to a DRM nurse:

> Some cannot pay at all. Migrants are very proud people. They would pay if they had it, but [financial]...priorities are put on them by the cost of their lifestyle and also the crew leader.[54]

---

[52]Ibid.
[53]Ibid.
[54]Stephens Interview.

CHAPTER 5

FINDINGS AND RECOMMENDATIONS

The findings and recommendations that follow are submitted under the provisions of Section 703.2(e) of the U.S. Commission on Civil Rights regulations calling upon Advisory Committees to initiate and forward advice and recommendations to the Commission about matters studied by the State Committees. Incidental to advising the Commission on these matters, the Delaware Advisory Committee plans to share its findings and recommendations with pertinent State and local officials and the interested public.

CHAPTER 2: HOUSING

Finding 2:1. There is no accurate count of either the number of migrants in the State of Delaware or of the number of migrants in need of housing within the State on a seasonal basis.

Recommendation 2:1. The Delaware Division of Public Health should require growers and/or crewleaders to provide the Division with the number of migrant workers actually employed during the calendar year.

Finding 2:2. Delaware has pursued an aggressive policy with respect to upgrading and enforcing housing standards governing migrant labor camps.

Recommendation 2:2. The Delaware Secretary of Health and Social Services and the Delaware Secretary of Labor should continue to utilize all available legal means to gain compliance with State migratory labor camp regulations.

Finding 2:3. Eighty percent of all growers in Delaware utilize the clearance system administered by the State employment office to recruit migrant workers, thereby providing greater assurances with respect to the adequacy of available migrant housing.

Recommendation 2:3. The Delaware Department of Health and Social Services and the Delaware Department of Labor, in conjunction with the U.S. Department of Labor, should continue their efforts to have growers utilize the clearance system.

Finding 2:4. An undetermined number of migrant workers are housed in unlicensed camps within the State that do not provide decent, safe, and sanitary accommodations and that are beyond the scope of State and local regulations.

Recommendation 2:4. The Delaware Division of Public Health and the State Department of Labor should make greater efforts to identify, locate, and inspect all migratory labor camps within the State. In addition, all facilities,

including commercial housing, used to house migrant workers should be required to adhere to minimal standards established by the Division of Public Health.

CHAPTER 3: EMPLOYMENT

Finding 3:1. Approximately 80 percent of all growers in Delaware utilize the interstate clearance system to recruit migrant workers. Use of this system provides greater assurances for the protection of migrant farmworkers.

Recommendation 3:2. The State Department of Labor should continue to encourage and assist growers in using the clearance system. In addition, the State Department of Labor and the Division of Public Health should increase efforts to monitor employment conditions among independent workers known as "freewheelers."

Finding 3:2. In 1983 the wage and hour division of the U.S. Department of Labor found that 11 farm labor contractors violated provisions of the Migrant and Seasonal Agricultural Workers Protection Act. Among the violations, five contractors failed to disclose conditions of employment to workers, four failed to maintain required records, and three failed to provide wage statements to workers.

Recommendation 3:2. The U.S. Department of Labor should increase the frequency of monitoring investigations under MSPA. Where frequent violations are found, the department should implement enforcement pursuant to subchapter V of the act.

Finding 3:3. While Delaware continues to experience problems common to migrant employment, the frequency and severity of those problems are decreasing.

Recommendation 3:3. The Governor should establish a commission on migrant and seasonal farm labor, with representation from governmental, social, and church agencies, as well as growers and migrants. This volunteer group should assist the State in identifying and resolving remaining problems concerning the employment of migrant and seasonal farmworkers.

CHAPTER 4: HEALTH CARE

Finding 4:1. Alcoholism is considered the major health problem among the Delaware migrant population. The high incidence of alcohol abuse is directly related to the lack of recreational opportunities available to migrant farmworkers.

Recommendation 4:1.The State Division of Public Health, in cooperation with the State Department of Labor, should undertake efforts to monitor alcohol abuse among migrants

and should support efforts by churches and other service organizations to provide recreational opportunities for migrants.

Finding 4.2. While health care for migrants is less than optimal, Delaware does offer a progressive system of health care services through a network of public health clinics, Delmarva Rural Ministries, private doctors, and private hospitals, all of whom work in general cooperation to meet the health needs of migrant farmworkers.

Recommendation 4:2. The network of health services available to migrants must be maintained, with the Delaware Division of Public Health supplementing as needed funding for the State's indigent migrant program.

Finding 4:3. Private, nonprofit service organizations, such as Delmarva Rural Ministries and Casa San Francisco, perform essential and invaluable primary health care services for migrants. Many of these services are not available through public health clinics.

Recommendation 4:3. Essential health care services provided by organiztions such as Delmarva Rural Ministries must be continued, with the provider organization receiving adequate funding to fulfill its function. State funding for such programs should be commensurate with demonstrated performance and projected need.

Finding 4:4. The inability to identify unlicensed migratory labor camps and the decreasing availability of physicians in rural communities poses a barrier to the delivery of health care services to Delaware's migrant population.

Recommendation 4:4. The staff of the farm program coordinator in the Delaware Department of Labor should be increased to a size adequate to allow the Department to discharge effectively all of its functions, including that of inspecting unlicensed labor camps identified by Delta Rural Ministries and others. In addition, the National Health Service Corps should encourage more physicians to serve in rural communities.

APPENDIX A: AGENCY REVIEW REPLIES

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
STATE OFFICE BUILDING
820 N. FRENCH STREET, 8TH FLOOR
WILMINGTON, DELAWARE 19801

CHARLES M. OBERLY, III
ATTORNEY GENERAL

DIRECT DIAL:
(302) 571-3890

January 26, 1984

Mr. Edward Rutledge, Regional Director
U. S. Commission on Civil Rights
Mid-Atlantic Regional Office
2120 L Street, N.W., Room 510
Washington, C.D. 20037

Dear Mr. Rutledge:

Thank you for sending the Delaware Advisory Committee report to the U. S. Commission on Civil Rights on migrant conditions in Delaware for my review and comment.

I have discussed the report with Charles A. Hatfield, Jr., and Sandra Land, both of the Division of Public Health, who were intereviewed for the report.

Mr. Hatfield made the following comments:

1. Arthur S. Benson's example at page 3, paragraph 2 of the Housing chapter contained some inaccuracies and should be changed to read as follows:

> "The camp consisted of three units. Unit 1 has two rooms with an area of 312 square feet/ room and 10 single beds. Units 2 and 3 each have ten rooms with space for 20 people in each unit."

2. Chapter 1 Housing, Page 5 - "Even among licensed migrant camps, some of Delaware's older camps were 'grandfathered' in and have no hot or cold running water."

There is no "grandfather" clause in our regulations. Further, all licensed camps have hot and cold running water.

3. Chapter 1, Housing, Page 6-"serious overcrowding existed." Mr. Hatfield writes: "Each of the camps are measured, and the number of beds per room is established before the crew arrives at the camp... We honor the privacy of the migrant and do not [ordinarily] inspect each bedroom after it is occupied."

Ms. Land offers the following regarding Chapter 3, Health Care:

1. Many services are available to migrant workers through Division of Public Health Clinics. The services offered to the public, including migrant workers.

2. Page 13- Indigent Migrant Program- funds for this program are available by fiscal year, from July 1 to June 30. Although it is true that Fiscal '83 funds were exhausted by February of 1983, that was an unusually early exhaustion of that funding, because of two persons with extended hospital stays and a larger number of total individuals.

As of mid-January of 1984, only about one-half of the available funding for Fiscal '84 has been used.

The following are my additional comments. It should be noted that in some areas, such as employment, or with regard to some specific findings, I do not have sufficient personal knowledge to comment.

A. Housing Chapter

1. Page 8 - I do not believe I characterized the State Board of Health regulations as "Federal OSHA regulations relating to migratory labor camps administered by the State Board of Health." I do not believe that I made any comparison of OSHA standards with State Health regulations. State Board of Health regulations per-

taining to Migrant Labor Camps are promulgated pursuant 16 Del. C. §122. The regulations should be cited in footnote 37 as "State Board of Health Migratory Labor Camp Regulations, Sections 47.01-47-13."

2. Page 11 - top of page 12 - The "county health teams" are staff of the County Health Units, which are a part of the State Division of Public Health. The "County" designation refers to location, not to governmental agency- thus, these inspections are done by the State's Division of Public Health.

3. Page 14- first full sentence- should read "actions," not "action."

B. Health Care.

1. Page 3- Although I did not interview Sister Bricketto, I would guess that she was not condoning drunkenness as a prerequisite to working, but was probably quoting some migrants who have made that assertion. When characterized as Sister Bricketto's assertion, the statement appears to represent her personal belief.

2. Page 12 - first full paragraph- two of the hospitals referred to are misspelled. They should be "Beebe" and "Nanticoke."

Thank you for permitting me an opportunity to comment. Please feel free to contact me if you have any questions.

Very truly yours,

Susan H. Kirk-Ryan

Susan H. Kirk-Ryan
Deputy Attorney General

SHK-R/bfd
cc: Lyman J. Olsen, M.D.

JAN 30 19[illegible]
Mid-Atlantic Regional Office

Ref. #840218

STATE OF DELAWARE
DEPARTMENT OF LABOR
DIVISION OF EMPLOYMENT SERVICES
POST OFFICE BOX 9029
NEWARK, DELAWARE 19711

PIERRE S. duPONT IV
GOVERNOR

DENNIS C. CAREY
SECRETARY OF LABOR

January 25, 1984

Mr. Edward Rutledge
Regional Director
United States Commission on Civil Rights
Mid-Atlantic Regional Office
2120 L Street, N.W. Room 510
Washington, DC 20037

Dear Mr. Rutledge:

Thank you for your letter dated December 29, 1983 and the invitation to comment on relevant chapters of the Delaware Advisory Committee's report on the living and working conditions of migrant farm workers in Delaware. In response, I would like to offer the following comments for your consideration during the formulation of the final report.

Chapter 1, HOUSING:

Page 1, the last sentence, which states "The reduction in the number of and capacity of these camps has been attributed to the increased use of automation in the harvesting of crops and to an overall reduction in the number and size of farms within the State." Actually, although the number of farms has decreased in Delaware since 1965, the average acreage per farm has increased from 163 in 1965 to 186 in 1981 (Source: Maryland-Delaware Crop Reporting Service).

Page 3, the example given of migrant housing available to members of registered crews in one camp in Kent County needs clarification. The source for the description of this camp was information submitted to your Commission on December 12, 1982, by Mr. Arthur S. Benson, at that time the Director of Employment Services in Delaware. The example cited in the report was apparently taken from page 1 of attachment 5 to the Clearance Order provided by Mr. Benson and indicates a total area of only 1248 square feet. This equates to an average of less than 25 square feet for each of the 50

JOB SERVICE

occupants when the camp is filled to capacity. The actual living area of this camp is represented by the aggregate total of square feet for each room as reflected on the three (3) pages of Attachment 5 to the Clearance Order. This total of 3005 square feet computes to an average of 60 square feet per occupant when the camp is filled to capacity, thus meeting minimum requirements of Federal Regulation at 20 CFR 653.407.

Page 5, where it's stated that some of Delaware's older camps were "grandfathered" in and have no hot or cold running water, we have had reports of lack of hot water for short periods (a day or two) but these conditions were corrected upon notification. We have not found any licensed camps without running or hot water for prolonged periods of time.

Chapter 2, EMPLOYMENT:

Page 8, an average trailer load of potatoes consists of 42,000 to 45,000 pounds; labor requirements are for 18 to 25 workers to work on each grader and to load the potatoes. Social Security deductions are 6.7% not 5.5%. The information in the report that the crewleader received 46¢ per hundred pounds and employed 30 workers for 1½ hours @$3.35 per hour and 6.7% Social Security deduction, does not support the statement that the crewleader would lose money if he/she paid workers for 1½ hours work.

Sample Computations:

EXAMPLE PER LOAD #50 BAGS	40,000(800 bags)	42,000(840 bags)	45,000(900bags
@.46 crewleader receives	184.00	193.20	207
Wages, 30 workers @$3.35 p/h for 1½ hours	150.75	150.75	150.75
Social Security Tax @6.7%	10.10	10.10	10.10
Crewleader cost per load	160.85	160.85	160.85
Crewleaders net profit per load	23.15	32.35	46.15

Number of loads per day depends on weather, potato market, availability of trailers, etc. Some large operations process 10 or more loads per day, but the overall average is estimated to be 6. Based on this estimate, the average daily wage is:

	40,000	42,000	45,000
@.46 crewleader receives	1104.00	1159.20	1242.00
9 hours @$3.35 for 30 wkrs.	904.00	904.00	904.00
Social Security Tax @6.7%	60.57	60.57	60.57
Crewleader cost	964.57	964.57	964.57
Crewleaders net profit per day based on 6 loads	139.43	194.63	277.43

Page 10, reference the statement 'that most migrants are afraid to complain to Legal Aid and to State and Federal Officials for fear of reprisal by the crewleader." Upon arrival in Delaware, migrant workers are contacted by the Employment Service Outreach Workers who advise them of their rights and of the Employment Service Complaint System. During the season, many workers ask questions about their pay and other concerns. Most of these potential complaints are resolved informally, but on each occasion the workers are advised of their right to file an official complaint. In some instances we have found other jobs and transferred workers from one crew to another, not because of fear, but because they did not desire to continue working for the same crewleader. We have never been informed of any crewleader who mistreated or terminated his workers because they complained.

Sincerely,

for Marcie Bierlein

Marcie Bierlein
Director, Division
of Employment Services

MAB:RAW:faf

U.S. Department of Labor

Employment and Training Administration
P.O. Box 8796
Philadelphia, Pennsylvania 19101

Reply to the Attention of

JAN 25 1984

U.S. Commission on Civil Rights
JAN 25 1984

Mr. Edward Rutledge
Regional Director
U.S. Commission on Civil Rights
Mid-Atlantic Regional Office
2120 L Street, N.W. - Room 510
Washington, D.C. 20037

Dear Mr. Rutledge:

This is in response to your letter dated December 29, 1983, concerning a study of the living and working conditions of migrant farmworkers in Delaware. Thank you for giving us an opportunity to comment on this study before it is published. Overall, it appears to be a fair picture of the migrant farmworker situation in Delaware. We would submit the following comments, however, for your consideration before the final report is issued:

(1) Introduction

On page 3 of the introduction, it is noted that "...nor does there appear to have been much change in the nation's treatment of migrants since Edward C. Murrow's television documentary 'Harvest of Shame' aired more than 20 years ago." We believe that such a statement overlooks several pieces of social legislation that were directed wholly or partly to correct the situation that existed 20 years ago. Some of the legislation that has been enacted in this area includes:

(a) The Comprehensive Employment and Training Act (CETA) which in Section 303 provided funds to farmworker organizations to assist migrants in employment, social services, and many other areas. Although CETA expired in September 1983, the provisions to assist migrants continued in the Job Training Partnership Act (JTPA).

(b) JTPA has similar provisions (Section 402) to CETA. As of October 1, 1983, this Act continues to provide funding to farmworker organizations to assist migrant workers throughout the nation.

(c) Unemployment compensation coverage is now available to migrant workers to provide income

during periods of unemployment which were so difficult in previous years.

(d) Social security taxes are now being deducted from migrants' pay in order to afford them the benefits of this protection. Social security benefits cover a wide range of assistance for disability, old age, etc.

(e) Legal services are provided through Federal grants to migrant and seasonal farmworkers. The Legal Aid Bureaus in many States are very active in assisting workers in a wide range of legal problems. Various court orders have resulted from this work to help remedy many injustices experienced by migrant workers.

(f) In Chapter 1 - Housing, you have also noted three other pieces of social legislation which aid migrants. The Farm Labor Contractor Registration Act which has now been superseded by the Migrant and Seasonal Agricultural Worker Protection Act and the Wagner-Peyser Act all help to assist migrants in the housing, transportation, and employment areas. Since you have discussed this legislation, we will not elaborate.

(2) Chapter 2 - Employment

Federal regulations 20 CFR 651, 653, and 658, dated June 10, 1980, were specifically issued by the Employment and Training Administration to improve services and working conditions for migrant and seasonal farmworkers (MSFWs). Through these regulations, we have sought to insure that all State employment offices would provide services for MSFWs on a basis that is quantitatively proportionate to services provided to nonmigrants. To assure that these regulations are enforced, a review of State employment offices is conducted by Federal staff (Regional Monitor Advocate and Federal representatives) on a periodic basis. State employment agencies must also submit quarterly reports to the Employment and Training Administration to

illustrate progress toward achieving specific objectives in serving migrant workers. All of those enforcement procedures help to assist migrants in Delaware and other States.

In sum, conditions for migrants have improved over the past 20 years due to the noted legislation. While conditions have improved considerably, we also recognize that additional efforts are necessary to assure further improvements in the plight of the migrant worker. All of our groups must work together to bring about further constructive changes toward assisting migrant workers.

Any questions you may have regarding this matter may be referred to Regional Monitor Advocate Albert Pinter at (215) 596-6368.

Sincerely,

/s/ William J. Haltigan

WILLIAM J. HALTIGAN
Regional Administrator

U.S. Department of Labor

Employment Standards Administration
3535 Market Street
Philadelphia, Pennsylvania 19104

Reply to the Attention of

JAN 19 1983

Mr. Edward Rutledge
Regional Director
U. S. Commission on Civil Rights
Mid-Atlantic Regional Office
2120 L Street, N. W., Room 510
Washington, D.C. 20037

Dear Mr. Rutledge:

This is in response to your letter dated December 29, 1983, enclosing a copy of the Delaware Advisory Committee to the United States Commission on Civil Rights report on the living and working conditions of migrant farm workers in Delaware.

The report in Chapter 1, Page 10, indicates that "Pursuant to the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), neither the crewleader nor the grower is technically required to provide rent free or public housing for migrant workers". While this is correct I would recommend adding: however if housing is provided to migrant workers, only the reasonable cost of furnishing such facility excluding profit is creditable as wages under the Fair Labor Standards Act.

The statement on Page 11 that "For the most part, monitoring and enforcement of these Federal regulations, FLSA and MSPA are referenced as two of the Federal regulations, is delegated in Delaware to the State Department of Labor and to the State Department of Health and Social Services" is misleading and not factually correct. The Employment Standards Administration, Wage-Hour Division, is responsible for the administration and enforcement of FLSA and MSPA.

I would also recommend adding a paragraph in the housing section that during 1983, the Wage-Hour Division conducted six housing safety and health inspections in the State of Delaware, which disclosed safety and health violations. Ten other investigations disclosed substantial compliance.

I would add a paragraph on Page 16 regarding MSPA enforcement that during 1983, the Wage-Hour Division conducted 16 investigations in Delaware under MSPA, 11 of which disclosed a violation of one or more provisions of MSPA.

Finally, I would add on Page 17 regarding FLSA, that one investigation disclosed underpayments of $1,600 to nine employees of the minimum wage provisions, and this amount was recovered for the workers. All other FLSA investigations disclosed compliance.

Your invitation to comment in advance of publication of the report is appreciated.

Sincerely,

Charles M. Angell
Regional Administrator
for Employment Standards

U.S. Department of Labor

Occupational Safety and Health Administration
3535 Market Street
Philadelphia, Pennsylvania 19104

Reply to the Attention of: FSO

January 13, 1984

Mr. Edward Rutledge, Regional Director
U.S. Commission on Civil Rights
Mid-Atlantic Regional Office
2120 L Street, N.W., Room 510
Washington, D.C. 20037

Dear Mr. Rutledge:

Thank you for allowing us the opportunity to review and comment on the Delaware Advisory Committee's Study of the Living and Working Conditions of Migrant Farm Workers in Delaware.

The portions of the report relevant to OSHA are clear and factual with the exception of one small area which might be misleading to readers. Page 8 of Chapter I states "Within the State of Delaware, Federal OSHA Regulations relating to migratory labor are administered by the State Board of Health pursuant to the State Migratory Labor Camp regulations." State Board of Health has adopted Federal OSHA regulations as a guideline for their enforcement activity. This does not, however, diminish OSHA's responsibility in Delaware. Within the State of Delaware, Federal OSHA regulations relating to migratory labor are administered and enforced by OSHA.

Thank you again for allowing us the chance to comment on this document before its publication.

If we may be of further assistance, please do not hesitate to contact this office.

Sincerely,

LINDA R. ANKU
Regional Administrator

U.S. Commission on Civil Rights
JAN 17 1984
Mid-Atlantic Regional Office

STATE OF DELAWARE
OFFICE OF THE SECRETARY
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
NEW CASTLE, DELAWARE 19720
PHONE: (302) 421-6705

January 12, 1984

Mr. Edward Rutledge, Regional Director
U. S. Commission on Civil Rights
Mid-Atlantic Regional Office
2120 L Street, N.W., Room 510
Washington, D. C. 20037

Dear Mr. Rutledge:

We have reviewed the Delaware Advisory Committee report to the U. S. Commission on Civil Rights on migrant conditions in Delaware and it appears to be reasonably accurate on matters about which we have knowledge or information.

Housing conditions for migrants have improved in the registered camps and the public health staff watch these closely. The conditions outside these camps can at times be deplorable. The Division of Public Health, the Agriculture Department, and the Labor Department of the State of Delaware reviewed the camp regulations a year ago with the Attorney General's office. It was felt that any attempts to modify the existing regulations would be a problem in that it would make them intrusive into areas where no clearly defined authority was given.

The lack of statewide or local housing codes in lower Delaware also hampers effective control of substandard dwellings, and the Division of Public Health has been urging county governments to adopt such local ordinances.

When conditions are bad and the Division of Public Health becomes aware of these, nuisance regulations can be invoked, but this requires the cooperation of the local law enforcement and judicial agencies, and often the inhabitants are gone before any effective action can be taken. The residents then are simply forced from one substandard dwelling to another one that may be even less desirable.

The Departments of Agriculture and Labor are working to insure better hiring practices and registration of crew chiefs to insure more responsibility in housing and health care.

The Chapter on Health Care seems to understate the availability of public health services for migrants. Migrants are eligible for any of the public health clinics, not just hypertension and EPSDT. Other clinics such as tuberculosis, venereal disease, child health, immunization, family planning, elderly screening and crippled children's services are available to migrants. Clinic hours are often extended during migrant season to assist in the health care

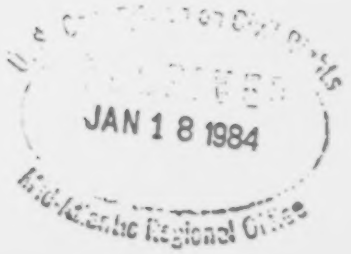
In addition, the statement is made by one witness on page 12 of the Health Care Chapter that migrants find it difficult to get Medicaid in Delaware because they have no tenure in the state. We are aware of no rules regarding tenure in the Delaware Medicaid Program, which is run by this Department. Thus, the statement would appear to be inaccurate.

Thank you for giving us an opportunity to comment on the report.

Sincerely,

Patricia C. Schramm
Secretary

PCS:sm



STATE OF DELAWARE
DEPARTMENT OF HEALTH & SOCIAL SERVICES
DIVISION OF PUBLIC HEALTH
JESSE S. COOPER MEMORIAL BUILDING
CAPITAL SQUARE
DOVER, DELAWARE 19901

January 3, 1984

Edward Rutledge, Regional Director
United States Commission on
Civil Rights
Mid-Atlantic Regional Office
2120 L Street, N.W., Room 510
Washington, D.C. 20037

Dear Mr. Rutledge:

I have reviewed the report of the study of the living and working conditions of migrant farm workers in Delaware which was included with your letter of December 29, 1983.

Attached are my comments which I noted on page 7 of Chapter 3 on Health Care.

Sincerely,

Lyman J. Olsen, M.D.
Director, Division of
Public Health

LJO/pb
Attachment

JAN 6 0 1984

clinics, according to State officials.[26] The main service centers are equipped for comprehensive medical services, which include some surgical procedures.[27]

State officials described the following screening programs available to migrants:

1) The Rural Hypertension Control Program provides screening, diagnostic, and prescriptive treatment.

2) The Early Periodic Screening, Diagnostic, and Treatment Program provides medical screening, diagnosis, and treatment for families with eligibility under aid to families with dependent children (AFDC) and medicare.

3) The Volunteer Services and Adult Crisis Intervention Programs provides counseling and emergency shelter for victims of domestic violence, destitution, or sudden catastrophe.

4) The Pharmaceuticals Assistance Program funded by the DeNemours Foundation (Delaware) assists needy patients with funds for prescription drugs.[28]

The extent to which migrants avail themselves of existing medical services and screening may depend on several factors. Transportation is one factor, although it usually does not constitute a major barrier. According to DRM and State officials, migrant workers are bused from licensed camps to evening clinics for initial medical screening and diagnosis. In addition, DRM transports workers in DRM vehicles when necessary and some migrants have access to private vehicles.

---

[26]Ibid.
[27]Ibid.
[28]Ibid.

Also available TB & VD clinics, child health conference, Crippled children services, eyesight hearing programs

BEST COPY AVAILABLE

APPENDIX B: MSPA VIOLATIONS

MSPA VIOLATIONS

1) Fail to post housing conditions.
Fail to ensure housing safety and health.

2) Fail to maintain records provided by FLC.

3) Fail to make/keep employer records.

4) Utilizing services of unregistered FLC.

5) Fail to disclose conditions to workers.
Fail to post MSPA poster at worksite.
Fail to make/keep employer records.
Fail to provide wage statement to workers.
Fail to provide records.
Fail to provide safe transport vehicles.
Fail to register employee.
Transported workers w/o certificate auth.

6) Fail to disclose conditions to workers.
Fail to make/keep employer records.
Fail to provide wage statement to workers.
Fail to post housing conditions.
Fail to ensure driver has valid license.
Fail to obtain prescribed insurance coverage.
Fail to register employee.
Transported workers w/o certificate auth.
Fail to apply to amend certificates.

U.S. Commission on Civil
RECEIVED
FEB 16 1934

MSPA Violations, Continued

7) Fail to disclose conditions to workers.
Fail to provide wage statement to workers.
Fail to ensure housing safety and health.

8) Fail to ensure housing safety and health.

9) Fail to disclose conditions to workers.
Fail to ensure housing safety and health.

10) Fail to ensure housing safety and health.

11) Fail to disclose conditions to workers.
Fail to post MSPA poster at worksite.
Fail to post housing conditions.
Fail to ensure housing safety and health.

HOUSING VIOLATIONS

1) Less than 40 square feet per person for sleeping purposes in dormitory accommodations using double-bunk beds only.

Showerheads at a ratio of one per every 15 persons not provided.

Laundry trays or tubs not provided in the ratio of at least one per 25 persons (or washing machines in the ratio of 1 per 50 persons including 10 laundry trays per 100 persons).

2) Inadequate drainage facilities provided for overlfow and spillage.

Toilet tissue not provided in common-use toilet facilities.

Cooking space not provided with a cook stove or hot plate with a minimum of two burners.

3) Inadequate arrangements for hanging clothes and storing personal effects for each person or family.

Toilet tissue not provided in common-use toilet facilities.

4) Inadequate arrangements for hanging clothes and storing personal effects for each person or family.

Toilet tissue not provided in common-use toilet facilities.

5) Less than 50 square feet per person for sleeping purposes in units containing single beds.

Separate sleeping facilities not provided for each family.

Toilet tissue not provided in common-use toilet facilities.

Privy structures and pits not fly-tight.

Refuse not collected at least twice a week or more often if necessary.

6) Inadequate drainage.

Less than 60 square feet of floor space per occupant for combined cooking, eating and sleeping purposes.

Openings in shelter not screened with not less than 15 mesh material.

Housing Violations, Continued.

Screen doors not in good repair or tight fitting.

Toilets not constructed, located or maintained in a manner to prevent nuisance or public health hazard.

Toilets not marked "men" and "women" and in native language of workers.

Common use toilets and privies not well-lighted, venilated or clean and sanitary.

Showerheads at a ratio of one per every 15 persons not provided.

Shower facilities for both sexes which are located in some buildings, not plainly marked "men" and "women" in English and the native language of the workers.

Fly-tight 20 gallon refuse containers not provided adjacent to housing unit, in a ratio of one container per every 15 persons.

Refuse not collected at least twice a week or more often if necessary.

Housing not structurally sound.

Housing not in good repair.

Housing does not provide protection against the elements.

Wiring and lighting fixtures in an unsafe condition.

Walls in all cooking and eating areas not of nonabsorbant, cleanable materials.

Fire extinquishers not provided.